

Decision 16-09-034 September 15, 2016

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U338E) for Approval of the Results of Its 2013 Local Capacity Requirements Request for Offers for the Moorpark Sub-Area.	Application 14-11-016 (Filed November 26, 2014)
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**DECISION GRANTING COMPENSATION TO SIERRA CLUB FOR  
CONTRIBUTION TO DECISION 16-05-050**

<b>Intervenor: Sierra Club</b>	<b>For contribution to Decision (D.) 16-05-050</b>
<b>Claimed: \$45,948.50</b>	<b>Awarded: \$42,938.50 (reduced 6.55%)</b>
<b>Assigned Commissioner: Michel Peter Florio</b>	<b>Assigned ALJ: Regina M. DeAngelis</b>

**PART I: PROCEDURAL ISSUES**

<b>A. Brief description of Decision:</b>	D.16-05-050, which arose from an Alternate Proposed Decision (APD) by Commissioner Peterman, approved in part SCE's application for approval of contracts to meet need for the Moorpark sub-area identified in Track 1 (D.13-02-015) of the 2012 Long Term Procurement Plan proceeding as a result of retirements of once-through-cooling facilities. The Decision approved contracts for the 262 Megawatts (MW) Puente gas plant and 12 MW of preferred resources. The Decision did not approve an extended contract for the existing 54 MW Ellwood peaker and associated 0.5 MW of new energy storage, leaving the application open to consider the reliability need for these projects in a subsequent decision.
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**B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:**

	<b>Intervenor</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):</b>		
1. Date of Prehearing Conference (PHC):	01/28/2015	Verified
2. Other specified date for NOI:	n/a	
3. Date NOI filed:	02/25/2015	Verified
4. Was the NOI timely filed?		Yes
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:	R.14-02-001	Verified
6. Date of ALJ ruling:	July 25, 2014	Verified
7. Based on another CPUC determination (specify):		
8. Has the Intervenor demonstrated customer or customer-related status?		Yes
<b>Showing of “significant financial hardship” (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	R.14-02-001	Verified
10. Date of ALJ ruling:	July 25, 2014	Verified
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision:	D.16-05-050	Verified
14. Date of issuance of Final Order or Decision:	06/01/2016	Verified
15. File date of compensation request:	07/06/2016	Verified
16. Was the request for compensation timely?		Yes

**C. Additional Comments on Part I:**

<b>#</b>	<b>Intervenor’s Comment(s)</b>	<b>CPUC Discussion</b>
1	Sierra Club filed an Application for Rehearing of D.16-05-050 jointly with the California Environmental Justice Alliance citing legal errors relating to the considerations of environmental justice in utility procurement. At the time this request for compensation was submitted, the	Given the unresolved nature of the Application for Rehearing, it would be premature to consider the hours related to the drafting of that Application here. The Commission therefore disallows these hours without prejudice. Following the resolution of the Application for Rehearing, Sierra Club may file another claim seeking compensation for time spent working on the Rehearing Application.

	Commission had not issued a decision on the rehearing application. For purposes of efficiency, Sierra Club includes these hours in this request.	
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## PART II: SUBSTANTIAL CONTRIBUTION

### A. Did the Intervenor substantially contribute to the final decision (*see* § 1802(i), § 1803(a), and D.98-04-059).

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
<p><b>1. Reliability Risk from Sea Level Rise:</b> Sierra Club argued that the site of the Puente project was at risk of sea level rise and flooding and that assessment of reliability risks posed by sea level rise was required as part of Commission review. Sierra Club argued that the sea level rise risk merited rejection of the project, or, at a minimum, deferral until more robust review at the California Energy Commission. (<i>See, e.g.</i> (Sierra Club Opening Br. pp. 1-5 (July 22, 2015); Sierra Club Opening Comments on PD/APD pp. 2-3 (Feb. 1, 2016); Sierra Club Opening Comments on Peterman APD pp. 5-9 (Mar. 3, 2016)).</p> <p>The ALJ PD/Florio APD agreed with Sierra Club that Puente approval should be deferred until after CEC review. The Final Decision acknowledged that climate risks to reliability did need to be assessed by the CPUC under Exec. Order B.30-15 (a view that was disputed by SCE and NRG). However, the</p>	<p>From Decision:</p> <p>“According to the <b>Sierra Club</b> and City of Oxnard, local reliability could be compromised with a future sea level rise.” (Decision p. 10 (citing Sierra Club Opening Br. p. 2-4).</p> <p>“The City of Oxnard and <b>Sierra Club</b> emphasize that this is a reliability issue, squarely within the jurisdiction of the Commission, since it concerns not the effect of the project on the environment, but the effects of the environment of the project.” (Decision p. 11 (citing Sierra Club Opening Br. p. 4)</p> <p>“<b>Sierra Club</b> argues that the Commission should nevertheless postpone its decision on this matter until the CEC completes its environmental review, a review that <b>Sierra Club</b> suggests could bring forth additional important considerations as related to reliability. <b>Sierra Club</b> suggests that benefits exist to waiting until the CEC’s review is complete, including giving the Commission a comprehensive picture of additional flooding risks and the related reliability concerns.</p> <p><b>Sierra Club’s</b> argument relies, in part, on Executive Order B-30-15, which directs all state agencies to “take climate change into account in planning and</p>	<p>Yes, Sierra Club’s participation aided in the Commission’s decisionmaking on this issue. Sierra Club provided the Commission decisionmakers with evidence that created a more informed position.</p>

<p>Decision found that sea level rise risk did not compromise reliability based on evidence presented in this case.</p>	<p>decision making....” <b>Sierra Club</b> also relies on the Commission’s “ongoing duty to ensure that utility investments result in infrastructure that is used and useful” and that generating capacity be “deliverable to locations and at times as may be necessary to maintain electric service system reliability and local area reliability.” (Decision pp. 12-13)</p> <p>From PD/Florio APD:</p> <p>“<b>Sierra Club</b> makes a strong argument that the Commission should postpone its decision on this matter until the CEC completes its environmental review, a review that <b>Sierra Club</b> suggests could bring forth additional important considerations as related to reliability. <b>Sierra Club</b> suggests that, even if the reliability risk is low, benefits exist to waiting until the CEC’s review is complete, including giving the Commission a comprehensive picture of additional flooding risks and the related reliability concerns.” (PD/Florio APD p. 13).</p>	
<p><b>2. Consideration of Environmental Justice in Procurement:</b></p> <p>Sierra Club initially focused its issues with the Puente project on sea level rise risk. However, Sierra Club was very concerned with the determination in the Peterman APD that Commission review is limited to “economic and reliability issues” and not environmental justice. Sierra Club then provided analysis explaining why this determination constituted legal</p>	<p><i>Compare</i> Peterman APD p.15-16, 19 (environmental justice is a CEC not CPUC issue) <i>with</i> Decision p. 16, 19 (referring to Ordering Paragraph 4 of D.13-02-015, reference to D.07-12-052, and concluding that “In future procurement applications, we intend to explicitly consider environmental justice issues as part of our review of procurement contracts.”)</p> <p>Decision p. 16: “CEJA and others cite to D.07-12-052 stating that IOUs “need to provide greater weight” to criteria regarding “disproportionate resource siting in low-income and minority communities and environmental</p>	<p>Yes.</p>

<p>error and was inconsistent with Ordering Paragraph 4 of D.13-02-015's reference to a prior decision calling for EJ considerations in procurement (LTPP Track 1 Decision). (Sierra Club Opening Comments on Peterman APD pp. 3-5 (Mar. 3, 2016; Sierra Club Reply Comments on Peterman APD pp. 1-2 (Mar. 8, 2016)).</p> <p>While the Decision found authority cited by Sierra Club was not binding on the Moorpark procurement, the Decision was significantly revised from the initial Peterman APD to call for explicit consideration of environmental justice in review of future procurement contracts.</p>	<p>impacts.”</p>	
<p><b>3. Procurement of Ellwood Invalid in New Source RFO.</b></p> <p>Sierra Club argued that the Application's proposed procurement of an extended contract for the existing 54 MW Ellwood peaker paired with 0.5 MW of new energy storage violated recently adopted procurement rules in D.14-02-040 limiting bids in new resource RFOs to incremental resources only. (<i>See, e.g.</i> (Sierra Club Opening Br. pp. 5-7 (July 22, 2015); Sierra Club Opening Comments on PD/APD pp. 5-7</p>	<p>From Decision p. 28: “the project does not fall within the definition of incremental resource and, under the terms of the Commission's prior decisions, the 54 MW contract to refurbish the Ellwood facility does not count toward the LCR procurement authorization required in D.13-12-015 (citing to Sierra Club Opening Br. at 5-6).</p>	<p>Yes, Sierra Club's participation aided in the Commission's decisionmaking on this issue. Sierra Club presented issues with the proposed procurement that allowed Commission decisionmakers to make a more informed position.</p>

<p>(Feb. 1, 2016); Sierra Club Opening Comments on Peterman APD pp. 10-11 (Mar. 3, 2016)).</p> <p>Sierra Club also argued that approving an extended contract with an existing fossil-fuel prior to a consideration of clean energy alternatives was inconsistent with the Loading Order. (<i>See, e.g.</i> Sierra Club Opening Comments on PD/APD pp. 7-8 (Feb. 1, 2016); Sierra Club Opening Comments on Peterman APD pp. 11-13 (Mar. 3, 2016)).</p> <p>The Decision found that Ellwood was not an incremental resource but that an extended contract could be considered in a subsequent decision in this docket. The ALJ PD had proposed to reject the Ellwood contract as inconsistent with Commission procurement rules.</p>	<p>The Decision requires further consideration of whether Ellwood is the best resource to meet any unmet local reliability need. (Decision pp. 31-32).</p>	
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**B. Duplication of Effort (§ 1801.3(f) and § 1802.5):**

	<b>Intervenor's Assertion</b>	<b>CPUC Discussion</b>
<b>a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?</b>	Yes	Verified
<b>b. Were there other parties to the proceeding with positions similar to yours?</b>	Yes	Verified
<b>c. If so, provide name of other parties:</b> City of Oxnard (Issue 1), California Environmental Justice Alliance (Issue 2), ORA (Issue 3).		Verified
<b>d. Intervenor's claim of non-duplication:</b> Sierra Club coordinated with the City of Oxnard, CEJA and ORA to minimize duplication in this proceeding. Because Sierra Club determined other parties would be raising similar concerns in testimony and cross-examination, Sierra Club focused on data requests and legal argument in briefing that was additive to other parties to minimize duplicative work while also ensuring Sierra Club's perspective was provided in this proceeding. For example, in the case of sea level rise, Sierra Club focused on the Commission's broader responsibility to ensure investments account for climate		Verified

adaptation under Exec Order B.30-15 and under the Commission’s own guidance on Climate Adaptation vulnerability assessments. In the case of Ellwood, Sierra Club’s arguments focused on the contract’s inconsistency with requirements for new source RFOs under the LTPP Track 3 Decision (D.14-02-040.) When the Peterman APD proposed to approve Puente (in contrast to the Florio APD/PD), Sierra Club provided its own unique framing and set of issues with the APD (e.g. assumed life of project for purpose of determining climate risk (which was corrected in final decision), presumed retirement of Mandalay 3 unit, fact that Ellwood was assumed retired in new LTPP scenarios, and ability to issue new RFO without comprising reliability). Sierra Club jointly filed a petition for rehearing with CEJA.	
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### PART III: REASONABLENESS OF REQUESTED COMPENSATION

#### A. General Claim of Reasonableness (§ 1801 and § 1806):

<p><b>a. Intervenor’s claim of cost reasonableness:</b></p> <p>This proceeding presented a question of first impression as to whether the CPUC is required to evaluate climate risk in considering new infrastructure investments. While finding evidence in this case was not shown to compromise reliability, the Decision agreed with Sierra Club that, in accordance with Exec. Order B-30-15, the Commission must take climate change into account in investment decisions to “help the state make more informed decisions and avoid high costs in the future.” (Decision p. 13, n. 32). Acknowledgment of the Commission’s responsibility to consider climate adaption will enable more prudent investments in the future.</p> <p>This proceeding also raised the issue of environmental justice in utility procurement, ultimately finding it would be something utilities would need to consider in the future. While Sierra Club argued that existing Commission Decisions on this issue were binding and not dicta, future consideration of environmental justice will help ensure a more equitable energy system.</p> <p>Sierra Club also argued for rejection of Ellwood. The Decision’s deferral of Ellwood until additional information on reliability need and consideration of potential alternative solutions will ensure the most cost-effective solution to a vetted reliability need.</p> <p>Taken together, the benefits obtained by Sierra Club far exceed the cost of Sierra Club’s participation in the proceeding. Sierra Club’s claim should be found to be reasonable.</p>	<p><b>CPUC Discussion</b></p> <p>Verified</p>
<p><b>b. Reasonableness of hours claimed:</b></p> <p>This proceeding raised controversial issues of first impression. There was a PD, two APDs and an all-party meeting. Sierra Club was cognizant of minimizing duplication while also ensuring its concerns were fully raised. Sierra Club’s hours</p>	<p>Verified</p>

are reasonable, especially in light of the multiple filings.	
<b>c. Allocation of hours by issue:</b> 1) Sea Level Rise: 39.2% 2) Environmental Justice : 15.8% 3) Ellwood Peaker: 24.6% 4) General: 20.4%	Verified

**B. Specific Claim:\***

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Matthew Vespa	2015	46	330	D.1501046	15,180	46	\$330.00	\$15,180.00
Matthew Vespa	2016	84.7	350	See Comment #1	29,645	76.1 <sup>[A]</sup>	\$350.00	\$26,635.00
Subtotal: \$44,825						Subtotal: \$41,815.00		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Matthew Vespa	2015	1.4	165	½ Full Rate	231	1.4	\$165.00	\$231.00
Matthew Vespa	2016	5.1	175	½ Full Rate	892.50	5.1	\$175.00	\$892.50
Subtotal: \$1,123.50						Subtotal: \$1,123.50		
TOTAL REQUEST: \$45,948.50						TOTAL AWARD: \$42,938.50		
<p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenor’s records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer’s normal hourly rate.</p>								



ATTORNEY INFORMATION			
Attorney	Date Admitted to CA BAR <sup>1</sup>	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Matthew Vespa	2002	222265	No

**C. CPUC Disallowances and Adjustments:**

Item	Reason
A	8.6 hours disallowed without prejudice for work related to Application for Rehearing. See discussion in Part B.

**PART IV: OPPOSITIONS AND COMMENTS**

<b>A. Opposition: Did any party oppose the Claim?</b>	No
<b>B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?</b>	Yes

**FINDINGS OF FACT**

1. Sierra Club has made a substantial contribution to D.16-05-050.
2. The requested hourly rates for Sierra Club's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$42,938.50.

**CONCLUSION OF LAW**

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

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<sup>1</sup> This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

**ORDER**

1. Sierra Club shall be awarded \$42,938.50.
2. Within 30 days of the effective date of this decision, Southern California Edison Company shall pay Sierra Club the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning September 19, 2016, the 75<sup>th</sup> day after the filing of Sierra Club's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated September 19, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

LIANE M. RANDOLPH

Commissioners

Commissioner Carla J. Peterman, being  
necessarily absent, did not participate.

## APPENDIX

### Compensation Decision Summary Information

<b>Compensation Decision:</b>	D1609034	<b>Modifies Decision?</b>	No
<b>Contribution Decision(s):</b>	D1605050		
<b>Proceeding(s):</b>	A1411016		
<b>Author:</b>	ALJ DeAngelis		
<b>Payer(s):</b>	Southern California Edison Company		

### Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Sierra Club	07/06/16	\$45,948.50	\$42,938.50	N/A	Hours Disallowed without Prejudice

### Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Matthew	Vespa	Attorney	Sierra Club	\$330	2015	\$330
Matthew	Vespa	Attorney	Sierra Club	\$350	2016	\$350

(END OF APPENDIX)